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October 9, 2009

VIA E-MAIL & FEDEX

Ms. Susan M. Hudson
Clerk
Vermont Public Service Board
112 State Street
Drawer 20
Montpelier, Vermont 05620

Re: Docket No. 7466 – Investigation into Petition Filed by Vermont Department of
Public Service Re: Energy Efficiency Utility Structure

Dear Ms. Hudson:

Enclosed for filing please find an original and six (6) copies of the Proposed Findings of Fact and Initial Brief of International Business Machines Corporation in the above-referenced proceeding. If you have any questions regarding this filing, please do not hesitate to contact me directly.

Very truly yours,

COUCH WHITE, LLP



Leonard H. Singer

LHS/dap
Enclosures
cc: All Parties on Attached Service List (via E-mail and U.S. Mail)
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PSB Docket No. 7466 - SERVICE LIST

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**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Investigation into Petition Filed by Vermont Department)
Of Public Service Re: Energy Efficiency Utility Structure) Docket No. 7466

**INTERNATIONAL BUSINESS MACHINES CORPORATIONS'
PROPOSED FINDINGS OF FACT**

I. COMPETITIVE SOLICITATION MODEL

IBM-1. The competitive solicitation model is the appropriate model for the structure of the Energy Efficiency Utility (“EEU”) because it has provided numerous benefits to the State of Vermont and its ratepayers. 6/26/09 Poor pf. at 5; 6/26/09 Martin pf. at 2.

IBM-2. The competitive solicitation model provides for a competitive bid process every three years. The competitive bid process, conducted every three years, is the most suitable process for making a determination regarding the EEU service provider because it assures the Vermont Public Service Board (“Board”) that the best approach is selected at the least cost to all Vermont ratepayers. 6/26/09 Aldrich pf. at 10; 7/31/09 Aldrich pf. at 11; 18-19.

IBM-3. The competitive solicitation model allows for new, innovative ideas from other potential service providers in a rapidly changing energy efficiency marketplace. Over the next several years, electricity delivery and efficiency strategies should see more rapid changes, driven by the availability of new technologies such as smart grid. As the market changes, it would be significantly more cost-effective to issue a new contract with new objectives rather than trying to negotiate incremental changes with an incumbent. 6/26/09 Aldrich pf. at 11.

IBM-4. Long term contracts can lead to complacency and lack of innovative ideas. Accordingly, new service providers should be given an opportunity, every three years, to present new ideas and approaches. 6/26/09 Aldrich pf. at 11.

IBM-5. The competitive solicitation model is more likely to result in cost savings because it will allow the Board to seek cost savings in either modifying the scope of work or in obtaining a lower cost via a three-year bidding cycle. 6/26/09 Aldrich pf. at 11.

IBM-6. The competitive solicitation process costs between \$100,000 and \$150,000. This is a minimal amount given that a six year appointment for an EEU can conservatively be valued at approximately \$200 million. 6/26/09 Aldrich pf. at 12; 7/31/09 Aldrich pf. at 10; 19; 6/26/09 Poor pf. at 19.

IBM-7. The Board should be hesitant in changing the EEU structure from a competitive solicitation model to an Order of Appointment because the State of Vermont has limited experience with Order's of Appointment. 6/26/09 Fratto pf. at 8.

II. ORDER OF APPOINTMENT

IBM-8. If the Order of Appointment Model is the model selected by the Board as the appropriate model for the structure of the EEU, the most important aspects of such an Order of Appointment are as follows: (i) the term of the appointment; (ii) the initial appointment process; (iii) Quantifiable Performance Indicators ("QPIs"), and the process for establishing the QPIs; (iv) mechanisms for compensation of the appointee; (v) the performance evaluation process. 6/26/09 Aldrich pf. at 12-13.

A. TERM OF APPOINTMENT

IBM-9. The Board should limit the Order of Appointment to a three year term length because it is difficult to precisely determine how long the term of the Order of Appointment needs to be to achieve its objectives. 6/26/09 Aldrich pf. at 6; 14, 18-19; 7/31/09 Aldrich pf. at 6; 6/26/09 Fratto pf. at 9.

IBM-10. A three-year term length is a sufficient term length to plan and implement projects, and to evaluate results. A three-year term allows the Board to formally assess the performance of the appointee, set new goals and objectives, and review competitive offerings in the energy efficiency market. 6/26/09 Aldrich pf. at 13.

B. INITIAL PERFORMANCE PROCESS

IBM-11. An initial Overall Performance Assessment (“OPA”) is needed prior to the initial appointment. This will allow for an initial performance evaluation of the incumbent EEU service provider and an assessment of current market conditions and alternative service providers. 6/26/09 Aldrich pf. at 15-16; 7/31/09 Aldrich pf. at 22-24; 6/26/09 Poor pf. at 18; 6/26/09 Fratto pf. at 11; H. Tr. 9/15/09 at 34.

C. QUANTIFIABLE PERFORMANCE INDICATORS

IBM-12. The QPIs should be designed to sufficiently evaluate the performance of the EEU. QPIs should cover all significant activities of the EEU, including resource acquisition and non-resource acquisition. The Board should mandate the creation of QPIs that have quantifiable and measurable targets. 6/26/09 Aldrich pf. at 14; 7/31/09 Aldrich pf. at 33.

IBM-13. QPIs should be established and performance evaluated in a public participation process on a three year cycle. 6/26/09 Aldrich pf. at 14; 7/31/09 Aldrich pf. at 31.

D. COMPENSATION MECHANISM

IBM-14. The Board should implement a compensation mechanism that links compensation with performance. Specifically, the Board should provide incentives for overperformance and penalties for underperformance. Overall, the total compensation paid to the EEU service provider should be heavily weighted toward incentive payment for achieving and exceeding established targets. The opportunity to earn incentives must be balanced by penalties for failure to achieve objectives. 6/26/09 Aldrich pf. at 15; 7/31/09 Aldrich pf. at 35-37.

IBM-15. Compensating the EEU service provider based solely on a rate of return rewards spending and not performance. The EEU service provider should not be shielded from financial risks by being guaranteed a minimum rate of return under all circumstances. 6/26/09 Aldrich pf. at 15.

E. PERFORMANCE EVALUATION

IBM-16. An OPA of the EEU service provider should be conducted every three years. This performance assessment should evaluate the current EEU service provider as well as the offerings and capabilities of other potential service providers in the marketplace. 6/26/09 Aldrich pf. 14-15; 7/31/09 Aldrich pf. at 25-29; 6/26/09 Poor pf. at 18.

F. ADVISORY COMMITTEE

IBM-17. The Board should eliminate the EEU Advisory Committee because it is unnecessary under an Order of Appointment Model. 6/26/09 Poor pf. at 21; 7/31/09 Aldrich pf. at 29.

IBM-18. If the Board determines that the EEU Advisory Committee is necessary, it should be an independent entity that reports to the Board. 6/26/09 Poor pf. at 21; 7/31/09 Aldrich pf. at 30.

G. ALTERNATIVE FUNDING

IBM-19. The Board should allow for the EEU service provider to seek alternative funding mechanisms. 6/26/09 Poor pf. at 22; 7/31/09 Aldrich pf. at 34-36.

IBM-20. Alternative funds should be used to reduce the burden of the EEU on the ratepayers of Vermont. 7/31/09 Aldrich pf. 34.

H. ONGOING OPPORTUNITY TO CONSIDER APPOINTMENT

IBM-21. The Board should allow any party at any point in the cycle of appointment to request that the Board initiate review of an EEU Appointment for cause. 7/31/09 Aldrich pf. at 4.

Dated: October 9, 2009
Albany, New York

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Leonard H. Singer" followed by a stylized flourish or initials.

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**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Investigation into Petition Filed by Vermont Department)
Of Public Service Re: Energy Efficiency Utility Structure)

Docket No. 7466

**INITIAL BRIEF OF INTERNATIONAL BUSINESS
MACHINES CORPORATION**

Dated: October 9, 2009

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**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Investigation into Petition Filed by Vermont Department)
Of Public Service Re: Energy Efficiency Utility Structure) Docket No. 7466

**INITIAL BRIEF OF INTERNATIONAL BUSINESS
MACHINES CORPORATION**

PRELIMINARY STATEMENT

International Business Machines Corporation (“IBM”) hereby submits its Initial Brief in the above-referenced docket. For the reasons set forth herein, the Board should continue with the competitive solicitation structure for the Energy Efficiency Utility (“EEU”), which has efficiently served the State of Vermont and its ratepayers well for over a decade.

PROCEDURAL HISTORY

IBM is a business electricity customer in Vermont and participates in Vermont’s EEU program. The EEU is composed of several entities, including the Vermont Energy Investment Corporation (“VEIC”), which operates under the trade name “Efficiency Vermont”, the City of Burlington Electric Department (“BED”), and the Department of Public Service (“DPS” or the “Department”). Efficiency Vermont provides most EEU services in Vermont, except for BED’s service territory, which provides its own energy efficiency programs.

The EEU program is currently operated under a three-year competitive solicitation model. Specifically, every three years, the Board conducts a competitive

solicitation, and signs a three-year contract with the winning bidder. In addition, every three years, the Board conducts a competitive solicitation to hire an EEU Contract Administrator and a Fiscal Agent for the EEU Fund. Moreover, the Department conducts savings-verification and evaluation activities related to the EEU on a three-year basis.

On August 29, 2008, the Department filed a petition requesting that the Board open an investigation for the purposes of considering a change in the structure of the EEU (“DPS Petition”).¹ In the DPS Petition, the Department stated that “energy efficiency services are of great value to Vermont ratepayers” and “[a]s delivery of services matures and becomes more complex due to higher energy prices, changing markets, and evolving parts, it is essential that such services be provided in the most efficient manner possible.” (DPS Petition at 1).

On September 11, 2008, the Board opened an investigation to evaluate changing the EEU structure from the competitive solicitation model to an Order of Appointment.² In the Order Opening Investigation, the Board identified a list of issues in which consensus could not be reached in the various Working Group discussions, including:

¹ Attached to the DPS petition was a document entitled “A Draft Recommendation for a New Energy Efficiency Utility Structure” (hereinafter referred to as the “Draft Recommendation”). On May 29, 2009, the Department filed a “Revised Draft Recommendation for a New Energy Efficiency Utility Structure” (hereinafter referred to as the “Revised Draft Recommendation”).

² Docket 7466, Investigation into Petition Filed by Vermont Department Of Public Service Re: Energy Efficiency Utility Structure, Order Opening Investigation and Notice of Prehearing Conference (issued September 11, 2008) (hereinafter referred to as the “Order Opening Investigation”).

1. Whether to change the structure of the EEU to an Order of Appointment model;
2. The length of appointment and timeframe for presumption of competitive solicitation for services;
3. Whether to change the process for appointing the EEU Advisory Committee members;
4. Transition issues associated with a move to a new structure;
5. Language regarding the relationship of the Energy Efficiency Charge, alternative funding options, and the EEU program budget;
6. Whether the EEU's "administrative efficiency" should be measured as a performance indicator; and
7. Whether certain customer-specific information should be made public if an efficiency investment was made using public dollars. (DPS Petition at 3-4).

Also, in the Order Opening Investigation, the Board accepted the Draft Recommendation and stated that "[u]sing the Draft Recommendation in this manner should facilitate the identification of issues to be resolved in this proceeding." (Order Opening Investigation at 2).³ The Draft Recommendation and Revised Draft Recommendation discuss, in detail, each of the above-mentioned issues. Collectively, these issues have

³ As stated above, on May 29, 2009, DPS filed a "Revised Draft of a Recommendation For a New Energy Efficiency Utility Structure."

provided guidance to the parties regarding the scope of appropriate issues to be addressed in this proceeding.

The Revised Draft Recommendation stated that “[a]s of 5/29/09 the settling parties have not reached consensus on some core issues and therefore the matter will proceed to formal testimony and technical hearings before the Public Service Board.” (Revised Draft Recommendation at 1). Subsequently, on June 26, 2009, various intervenors filed direct testimony and the Department, VEIC, the Conservation Law Foundation (“CLF”), and IBM filed rebuttal testimony on July 31, 2009. In addition, on August 28, 2009, the Department and the Central Vermont Public Service Corporation (“CVPS”) filed sur-rebuttal testimony. Thereafter, technical hearings were conducted in this proceeding on September 15-16, 2009.

ARGUMENT

POINT I

THE BOARD SHOULD CONTINUE WITH THE COMPETITIVE SOLICITATION MODEL AS THE APPROPRIATE MODEL FOR THE STRUCTURE OF THE EEU

The Board should maintain the competitive solicitation model as the appropriate model for the structure of the EEU. Initially, in evaluating the issues in dispute in this proceeding, the Board must be cognizant of the fact that the competitive solicitation model has served the State of Vermont and its ratepayers well for over a decade. This fact has been confirmed by DPS Witness Walter (TJ) Poor:

[T]he current structure has provided numerous benefits to Vermont’s ratepayer. Vermont has consistently been rated as

having one of the best energy efficiency programs in the nation.
(6/26/09 Poor pf. at 5).

DPS Witness Walter (TJ) Poor reiterated this position on cross-examination in stating that “the current contract structure mechanism has set up performance indicators and goals, and we are meeting those goals.” (H. Tr. 9/15/09 at 66). Moreover, Green Mountain Power Corporation (“GMP”) Witness David P. Martin stated that:

GMP believes the current EEU structure, principally consisting of a three-year contract with the Board with an option of an additional three years, has served the State very well to date.
(6/26/09 Martin pf. at 2).

The competitive solicitation model, conducted every three years, assures the selection of the best candidate at the least cost to all Vermont ratepayers. The competitive solicitation model allows for new, innovative ideas from other potential suppliers in a rapidly changing energy efficiency marketplace. Over the next several years, electricity delivery and efficiency strategies should see more rapid changes, driven by the availability of new technologies such as smart grid. It would be imprudent for Vermont to be locked into one provider of efficiency services during such a period of rapid change. Therefore, the Board should preserve the flexibility to select, on a three-year cycle, the efficiency service provider whose capabilities best match Vermont’s changing needs.

Various parties to this proceeding have advocated for the adoption of an Order of Appointment as the appropriate model for the structure of the EEU and that such an Order of Appointment should be for a duration of six or twelve years.⁴ However, the Order of

⁴ Pursuant to 30 V.S.A. § 209(d)(5) “[a]ppointment of any entity under subdivision (2) of this subsection may be by contract or by order of appointment. An appointment, whether by order of appointment or by contract, may only be issued after notice and

Appointment model is not an acceptable business model. Such a long term contract can lead to complacency and the lack of innovative ideas. The Board should allow new energy efficiency service providers the opportunity to periodically present new ideas and proposals. This will prevent the following risks to the State and its ratepayers: (i) being locked into an Order of Appointment with an ineffective or high cost appointee, (ii) lack of incentive for the appointee to perform; and (iii) limiting innovation and new ideas that might be brought by competition. Also, as acknowledged by DPS Witness Robert Fratto, “[t]he State has limited experience with Order’s of Appointment.” (6/26/09 Fratto pf. at 8). These risks should persuade the Board to continue with the competitive solicitation model as the appropriate model for the structure of the EEU.

In addition, the various parties to this proceeding that have stated that conducting a competitive solicitation process every three years is an expensive process that can be avoided with a long term Order of Appointment failed to show that the cost of a competitive solicitation justifies adoption of an Order of Appointment. For example, DPS Witness Robert Fratto stated that:

The solicitation process which includes RFP development and issuance, bid review, candidate interviews, contractors, selection and contract negotiation is a lengthy and expensive process. (6/26/09 Fratto pf. at 6).

opportunity for hearing. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract.” Accordingly, the Board has the option of continuing with the contract model as the structure of the EEU or changing to an Order of Appointment as the structure of the EEU. However, under Vermont law, the Order of Appointment cannot exceed twelve years.

However, IBM's estimate that the competitive solicitation process costs between \$100,000 and \$150,000 was not challenged or refuted by any evidence in this docket. (6/26/09 Aldrich pf. at 12). This is a minimal amount given that for 2011, the Board approved the Energy Efficiency Charge ("EEC") collection at \$40.7 million:

For 2011, the Board approved EEC collection...at \$40.7 million. Based on this figure an initial six year appointment for an EEU could conservatively be valued at approximately \$200 million. (6/26/09 Poor pf. at 19).

Accordingly, the cost to conduct a competitive solicitation every three years is minimal compared to the annual and/or three year budget for the EEU and the arguments to the contrary should be disregarded by the Board. The cost of conducting the competitive solicitation every three years is a small price to pay to ensure that the State of Vermont and its ratepayers are receiving the best program and projects for the amount of money invested.

Moreover, concerns have been raised regarding the EEU and its participation in the ISO New England Inc.'s ("ISO-NE") Forward Capacity Market ("FCM"). It has been stated that participation in ISO-NE's FCM requires longer terms. For example, DPS Witness Robert Fratto stated that a long term appointment will provide "better alignment with EEU's responsibility in ISO-New England's Forward Capacity Market." (6/26/09 Fratto pf. at 3). However, Efficiency Vermont has successfully participated in the ISO-NE FCM and there is no reason to believe that such successful participation will not continue into the future.⁵ Indeed, any issues associated with aligning the term of the EEU with obligations under the

⁵ In addition, the same end-of-cycle issues regarding the FCM that are present with the competitive solicitation model will also be present with a longer term Order of Appointment.

FCM could be addressed by requiring any successor EEU entity to assume and be fully responsible for all FCM obligations of the predecessor entity.

POINT II

IF, *ARGUENDO*, THE BOARD DECIDES TO IMPLEMENT AN ORDER OF APPOINTMENT, THE ORDER OF APPOINTMENT SHOULD BE SUBJECT TO THE FOLLOWING CONDITIONS

If, *arguendo*, the Board decides to implement an Order of Appointment as the appropriate model for the EEU structure, such an Order of Appointment should be subject to the following conditions: (i) the appointment should be for a term of three years; (ii) an initial Overall Performance Assessment (“OPA”) should be conducted prior to the first term; (iii) OPAs should be conducted every three years; (iv) Quantifiable Performance Indicators (QPIs) should be designed to sufficiently evaluate the performance of the EEU; (v) a compensation mechanism should be established that provides incentives for overperformance and penalties for underperformance; (vi) the Board should allow for an ongoing opportunity for it to consider the Appointment; (vii) the Board should eliminate the EEU Advisory Committee; and (viii) the Board should allow the EEU service provider to seek alternative funding. As set forth herein, these conditions are necessary to ensure that the State and its ratepayers will continue to be served by the EEU in an efficient manner.

A. The Board Should Limit the Order of Appointment to Three Years

The Board should limit the Order of Appointment to a three-year term length. Three years is a sufficient term length to plan and implement projects, and to evaluate

results. A three-year term allows the Board to formally assess the performance of the appointee, set new goals and objectives, and review competitive offerings in the energy efficiency market. Moreover, DPS Witness Robert Fratto stated that “[i]t is difficult to precisely determine how long the term of the Order of Appointment needs to be to achieve all of the benefits” described by the Department. (6/26/09 Fratto pf. at 9). Given the uncertainty of how long the term of the Order of Appointment needs to be to achieve all of the benefits described by the Department, the Board should be extremely hesitant to extend the term of the Order of Appointment beyond three years.

Also, as stated above, the energy efficiency marketplace is changing rapidly and significant changes are likely to continue in the future. Technological advances (i.e., smart grid), energy costs, and governmental incentives and subsidies will result in more qualified energy efficiency service providers with a diversity of skills and expertise. The nature and pace of the changes described above give ample reason for the Board to implement a three-year term for the Order of Appointment.

B. The Board Should Conduct An Overall Performance Assessment Prior To The Initial Appointment

An initial OPA is necessary prior to the initial Order of Appointment. This will allow for an initial performance evaluation of the incumbent EEU provider and an assessment of current market conditions. Bench-marking will allow the Board to consider alternative service providers that may be able to provide enhanced services. The Department also supports this position:

[T]he Department asserts that an Overall Performance Assessment should be conducted prior to the award of an initial Order of Appointment.” (6/26/09 Poor pf. at 18).

DPS Witness Walter (TJ) Poor reiterated this position on cross-examination, in stating:

So the OPA is a proxy for that competition where we have a chance to take a look at the marketplace independently and determine if there are programs that we aren't targeting that we should, if there is performance in a -- another jurisdiction that -- and this is all for example purposes, there may be another method of delivering low income electric efficiency services that is better suited. And it gives us an opportunity to really review the marketplace, and this is more in-depth than just a benchmarking review. And with hundreds of millions of dollars potentially on the line, an initial OPA, the Department feels strongly that an initial OPA is warranted. (H. Tr. 9/15/09 at 34).

Also, DPS Witness Robert Fratto stated that:

Conducting an OPA of the existing contractor at the beginning of the process and, unless the Board finds cases, appointing the Vermont Energy Investment Corporation (VEIC) and the Burlington Electric Department (BED) as EEUs is [a] logical first step. It will help build public confidence in such an appointment, should it occur, and create an up-to-date public record of the reasons that VEIC and BED were appointed. (6/26/09 Fratto pf. at 11).

While there should not be a presumption that VEIC and BED should be awarded the initial Order of Appointment, DPS Witness Robert Fratto's position that an OPA should be conducted prior to the initial Appointment is appropriate.⁶

⁶ The Board should reject the position that there should be a presumption that VEIC and BED should be awarded the initial Order of Appointment. The initial selection should be done after a competitive bid process to provide all potential bidders an opportunity to bid. A competitive solicitation prior to the initial appointment will ensure that the most cost-effective approach is taken.

Also, various parties to this proceeding have stated that an initial OPA prior to the initial Order of Appointment is too costly. For example, VEIC Witness John J. Plunkett stated that an initial OPA “is unnecessary, and would be an untimely and unproductive expenditure of ratepayer and other limited public resources by the DPS, the EEU, and the Board.” (7/31/09 Plunkett pf. at 9). However, given the fact that under Vermont law, the initial Order of Appointment may be for a term of up to twelve years, and that such a term would mean a commitment of approximately half a billion dollars, it seems more than reasonable for the Board to conduct an OPA prior to awarding the initial Order of Appointment. Accordingly, the Board should reject any assertion to the contrary.

C. The Board Should Conduct An Overall Performance Assessment Every Three Years

The Board should mandate that OPAs be conducted every three years to ensure that the EEU is operating in an efficient manner. EEU performance should be evaluated to protect ratepayers and make any necessary adjustments to the requirements of the EEU. An OPA, conducted every three years, should be a learning tool issued to improve the process and continuously improve and foster stronger communication between the EEU, the Department, and the Board. A three year review process is consistent with the Department’s position:

[T]he Department believes a process that requires review and evaluation every three years, is the best way to ensure that the appointee is performing adequately. (6/26/09 Poor pf. at 18).

A three year review process is also consistent with Vermont law. 30 V.S.A. § 209(e)(12) states “on or before January 1, 2003, and every three years thereafter, by an

independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section.” Also 30 V.S.A. § 209(e)(2) states “[t]he linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the board.”

Any review process that exceeds a three-year review process would provide the potential for too many years of poor performance in between OPAs. Accordingly, it is in the best interest of the State of Vermont and its ratepayers to conduct an OPA every three years to make certain that the EEU service provider is performing adequately. In addition, it is important to conduct an OPA every three years to make an assessment of the marketplace to determine if there are alternative service providers that may be able to provide enhanced services.

D. Quantifiable Performance Indicators Should Be Designed to Sufficiently Evaluate The Performance of the EEU

The Board should direct that QPIs be designed to sufficiently evaluate the performance of the EEU. The QPIs should cover all significant activities of the EEU, including resource acquisition and non-resource acquisition. Also, the Board should mandate the creation of QPIs that have quantifiable and measurable targets. Specifically, QPIs should be designed to adequately quantify not only acquisition of electrical efficiency and demand resources, but also results from the expanding list of non-resource acquisition tasks. QPIs

should also include measurements and associated targets for administrative efficiency and cost control.

QPIs should be established and performance evaluated on a three year cycle. This is consistent with the Revised Draft Recommendation, which stated that QPIs should be set, reviewed and reset every three years. (Revised Draft Recommendation at 1; 19). Also, this is consistent with Vermont law. 30 V.S.A. § 209(e)(12) states “on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section.” In addition, the process of setting the QPIs should be a public participation process whereby all stakeholders are allowed the opportunity to participate.

Furthermore, as stated in the Revised Draft Recommendation, the Board should direct the DPS to “annually certify to the PSB whether an EEU has achieved or made appropriate interim progress toward achieving QPIs.” (Revised Draft Recommendation at 19). Not only should the Department provide annual certification, but the Department should also provide information to the Board annually on how other energy efficiency service providers are performing in other jurisdictions and what adjustments need to be made to the EEU to align with industry best practices.

E. The Board Should Establish A Compensation Mechanism That Provides For Incentives For Overperformance and Penalties For Underperformance

The Board should implement a compensation mechanism that links compensation with performance. The current approach should be changed to an incentive program where there are incentives for overperformance and penalties for underperformance. Overall, the total compensation paid to the EEU service provider should be heavily weighted toward incentive payment for achieving and exceeding established targets. Compensating the EEU service provider based solely on a rate of return rewards spending and not performance. The EEU service provider should not be shielded from financial risks by being guaranteed a minimum rate of return under all circumstances.

F. Ongoing Opportunity to Consider Appointment

The Board should allow any party to request that the Board initiate review of an EEU Appointment for cause. The Board should then be given the opportunity to review the request and determine whether to initiate a review process. Such a review should be equivalent to an OPA. However, the right to petition the Board to review the performance of EEU should not serve as a substitute for reporting requirements currently required of the EEU contractor.

G. The Board Should Eliminate the EEU Advisory Committee

The Board should eliminate the EEU Advisory Committee. The EEU Advisory Committee is unnecessary under an Order of Appointment model. The Department shares this view: “[t]he Department believes the EEU Advisory Committee is unnecessary under an Order of Appointment.” (6/26/09 Poor pf. at 21). The value of the Advisory Committee is unclear and it would add significant cost.

If the Board determines that the Advisory Committee is necessary, it should be an independent entity that reports to the Board. This Department also shares this position:

In the alternative, if an Advisory Committee is maintained as a function of the appointee, the Department asserts that the members should not be appointed by the EEU as the required ratepayer funded committee should be a completely independent body. (6/26/09 Poor pf. at 21).

Accordingly, the EEU should not be given the authority to determine the role and composition of the EEU Advisory Committee.

H. The Board Should Allow For Alternative Funding

The Board should allow for the EEU service provider to seek alternative funding. This position is consistent with Vermont law. Pursuant to 30 V.S.A. § 209(d)(4) the Board can adjust the EEC “as necessary in order to realize all reasonably available, cost-effective energy efficiency savings.” The Department also asserts that seeking additional funding is appropriate:

“[t]he Department contends that the Public Service Board should encourage an EEU to seek alternative funding mechanisms.” (6/26/09 Poor pf. at 22).

Not only should the Board direct the EEU service provider to seek alternative funding, but the Board should also mandate that such alternative funding result in a corresponding reduction in the EEC. Accordingly, the Board should direct the EEU to seek alternative funds, which will reduce the burden of the EEU on the State of Vermont and its ratepayers.

CONCLUSION

For the reasons set forth herein, IBM respectfully requests that the Board maintain the competitive solicitation model as the appropriate model for the structure of the EEU. If, *arguendo*, the Board decides to change the structure of the EEU from the competitive solicitation model to an Order of Appointment, the Board should implement an Order of Appointment consistent with the above-mentioned conditions. Such conditions will ensure that the State and its ratepayers will continue to be served by the EEU in an efficient manner.

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Respectfully submitted,



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